

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

JANICE GILBERT,	:	APPEAL NOS. C-090520
		C-090521
Plaintiff-Appellee/Cross-	:	TRIAL NO. DR-0700946
Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
STEPHEN GILBERT,	:	
	:	
Defendant-Appellant/Cross-	:	
Appellee,	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant/cross-appellee, Stephen Gilbert, appeals the judgment of the Hamilton County domestic relations court dividing marital property in a divorce action. Plaintiff-appellee/cross-appellant, Janice Gilbert, also appeals the court's property division.

In 2007, Mrs. Gilbert filed for divorce, and the court referred the matter to a magistrate. In his report, the magistrate recommended that a \$15,000 bonus paid by Mr. Gilbert's employer be treated as a marital asset in the property division. Mr. Gilbert filed objections, contending that the bonus should have been characterized as income and not as an asset.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

The court sustained Mr. Gilbert's objection with respect to the bonus and referred the case back to the magistrate for further consideration of other matters. The order of reference did not mandate further consideration of the bonus.

After further proceedings before the magistrate, the magistrate again recommended that the bonus be treated as an asset, and he recommended awarding the entire bonus to Mr. Gilbert. The trial court accepted those recommendations over Mr. Gilbert's objection. And among other provisions, the court awarded the marital residence to Mrs. Gilbert.

In his first assignment of error, Mr. Gilbert now contends that that the trial court erred in accepting the recommendation of the magistrate that the bonus be treated as an asset rather than as taxable income. Specifically, he argues that, because the court had initially sustained his objection on the issue, the magistrate was without authority to reconsider the matter.

We find no merit in this argument. The trial court had the ultimate authority to determine the classification of the bonus irrespective of the issues it had specifically referred to the magistrate. In this regard, Civ.R. 53(D)(4)(b) provides that "[w]hether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate." Moreover, a trial court has the authority to revise its own judgment at any time before it becomes final.² Accordingly, the court's failure to mention the issue of the bonus when it returned the case to the magistrate did not preclude it from revisiting the issue after the magistrate's second report.

Nonetheless, Mr. Gilbert contends that, after the court had initially sustained his objection, the court's ruling became the law of the case. But the law-of-the-case

² See *Zunshine v. Cott*, 10th Dist. No. 06AP-868, 2007-Ohio-1475, ¶19.

doctrine provides that the decision of a *reviewing* court becomes the law of the case for all subsequent proceedings at both the trial and the reviewing level.³ In this case, there had been no decision of a reviewing court; the domestic relations court merely revised its own decision. Accordingly, the law-of-the-case doctrine did not apply, and we overrule the first assignment of error.

In his second assignment of error, Mr. Gilbert argues that the court erred in classifying the bonus as an asset to be credited to his share of the property division.

Domestic relations courts are given broad discretion in determining the equitable division of property in divorce actions, and such determinations will not be reversed absent an abuse of discretion.⁴ Although the court is to begin with the presumption that the division of property should be equal,⁵ the mere fact that the division is unequal, standing alone, does not amount to an abuse of discretion.⁶

In this case, the evidence indicated that, although the bonus had been earned during the marriage, it had been paid when the parties were living separately. There was no evidence that the bonus had been used to maintain the household, to discharge marital obligations, or to otherwise benefit Mrs. Gilbert. Under these circumstances, the trial court did not abuse its discretion in determining the bonus to be an asset of Mr. Gilbert for purposes of the property division. We overrule the second assignment of error.

In his third and final assignment of error, Mr. Gilbert argues that the court erred in failing to reduce the value of the bonus by the amount of income tax that he had owed on the asset. This argument is without merit. As Mr. Gilbert concedes, he failed to adduce any evidence concerning the amount of taxes he had owed on the

³ *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3, 462 N.E.2d 410.

⁴ See *Kenning v. Gundrum*, 1st Dist. No. C-060921, 2007-Ohio-4706, ¶5.

⁵ R.C. 3105.171(C)(1)

⁶ *Gundrum*, *supra*, at ¶5.

bonus. Thus, the trial court had no basis upon which to reduce its value, and we overrule the third assignment of error.

We turn now to Mrs. Gilbert's cross-appeal, which concerns the award of the marital residence. In her sole assignment of error, she argues that, because the mortgage obligations on the home exceeded its value, the court erred in not equally dividing the debt on the property

We find no abuse of discretion in the court's decision. Mrs. Gilbert expressed a desire to be awarded the home, and the award offered her the opportunity to reap the benefit of any appreciation in its value. Moreover, the court took the added debt into account by ordering an increase in Mr. Gilbert's spousal-support obligation. Under these circumstances, the trial court's judgment was not arbitrary, unreasonable, or unconscionable.

We overrule Mrs. Gilbert's assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 31, 2010

per order of the Court _____
Presiding Judge